

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte M. STEPHEN LAJOIE and KENNETH R. CUMMINGS

Appeal No. 95-0124
Application 08/040,911¹

ON BRIEF

Before RONALD H. SMITH, WINTERS and GRON, Administrative Patent Judges.

WINTERS, Administrative Patent Judge.

DECISION ON APPEAL

This appeal was taken from the examiner's decision rejecting claims 1, 4, 5, 8, 9, 12 through 14, 18, 21 through 29 and 33, which are all of the claims remaining in the application.

REPRESENTATIVE CLAIM

Claim 1, which is illustrative of the subject matter on appeal, reads as follows:

¹ Application for patent filed March 30, 1993. According to appellants, this application is a continuation of Application 07/853,965, filed March 20, 1992, now abandoned.

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1. A dietary fatty acid salt product for ruminants consisting of encapsulated granules which comprise:

- (A) a core matrix comprising at least one C₁₄-C₂₂ fatty acid salt of calcium or magnesium alkaline earth metal; and
- (B) a polysaccharide, polyvinyl or polypeptide polymeric coating in the form of a continuous film which is an impermeable barrier to volatile organic compounds contained in the core matrix;

wherein the encapsulated granules have an average particle size between about 100-5000 microns, and a polymeric coating thickness between about 5-50 microns.

THE REFERENCES

The references relied on by the examiner are:

Palmquist et al. (Palmquist)	4,642,317	Feb. 10, 1987
Ardailon et al. (Ardailon)	4,877,621	Oct. 31, 1989

THE ISSUE

The issue presented for review is whether the examiner erred in rejecting all of the appealed claims under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Palmquist and Ardailon.

DELIBERATIONS

Our deliberations in this matter have included evaluation and review of the following materials: (1) the instant specification, including all of the claims on appeal; (2) appellants' main Brief and Reply Brief before the Board; (3) the Examiner's Answer and the communication mailed by the examiner

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September 13, 1994 (Paper No. 13); and (4) the above-cited references relied on by the examiner.

On consideration of the record, including the above-listed materials, we reverse the examiner's rejection under 35 U.S.C. § 103.

DISCUSSION

In rejecting all of the appealed claims under 35 U.S.C. § 103, the examiner argues that it would have been obvious to encapsulate the fatty acid calcium salts of Palmquist with the polymer coating of Ardaillon. See the Examiner's Answer, page 4. We have no doubt that the prior art could be modified in the manner proposed, which is apparent on reviewing the instant specification and claims. The mere fact that the prior art could be so modified, however, would not have made the modification obvious unless the prior art suggested the desirability of the modification. In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Here, the examiner does not provide a cogent reason or motivation stemming from the references which would have led a person having ordinary skill to modify the fatty acid calcium salts of Palmquist, per the teachings of Ardaillon, in the manner proposed. On the contrary, we agree with appellants that the

hypothetical person having ordinary skill in the art would have found it redundant to encapsulate Palmquist's fatty acid calcium salt granules with Ardaillon's polymeric coating. This follows because fatty acid calcium salts bypass the rumen and, accordingly, do not require a polymeric coating for safe passage therethrough. See Palmquist, column 3, lines 28-41, and see appellants' main Brief, page 6, first and second paragraphs; page 11, third paragraph; and page 13, first paragraph.

In their specification, appellants describe a disadvantage associated with using fatty acid salt products such as those disclosed by Palmquist. According to appellants,

[a] disadvantage associated with the use of fatty acid salt products as feed additives is a characteristic unpleasant odor, which derives from a content of one or more volatile organic oxygenates in the feed additives.
[Specification, page 2, lines 22-26.]

The present invention provides a solution to the malodor problem characteristic of Palmquist's fatty acid calcium salts.

According to the present invention, a fatty acid salt of calcium or magnesium is encapsulated with a polymeric coating as set forth in the claims. The encapsulated fatty acid salt product functions as an odor-free rumen bypass dietary supplement in ruminant feed. It can be seen that appellants provide a reason for encapsulating a core matrix comprising at least one C_{14} - C_{22}

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fatty acid salt of calcium or magnesium with a polymeric coating,
whereas the cited prior art references do not.

According to the examiner,

[i]t would have been obvious to combine the polymer coating of Ardaillon with the tallow fatty acid calcium salts of Palmquist since Palmquist recognizes that an improved encapsulation technique for coating fatty acids could be useful as a ruminant feed stuff (column 1, lines 52 through 62). [Emphasis added.]

See the Examiner's Answer, page 4, lines 5 through 9. This amounts to a non-sequitur, and constitutes reversible error.

The examiner's decision is reversed.

REVERSED

RONALD H. SMITH)	
Administrative Patent Judge)	
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SHERMAN D. WINTERS)	BOARD OF PATENT
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